

NOT FOR PUBLICATION

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS

DIVISION OF SAINT CROIX

UNITED STATES OF AMERICA,

Plaintiff,

Crim. No. 2003/04

v.

MARIO SKELTON,

Defendant.

ORDER REGARDING DEFENDANT'S MOTION TO COMPEL

THIS MATTER is before the Court on defendant's motion to compel and the government's response.

Defendant seeks discovery of the criminal background of the government's confidential source. The defendant's request includes any written confidential agreements; evidence of payments made to the informant; information regarding the informant's failure to follow instructions; evidence regarding deactivation of the informant; transcripts of grand jury testimony given by the informant; and evidence of the informant's involvement in illegal activity. The defendant asserts that such material is discoverable under, *inter alia*, *Brady v. Maryland*, 373 U.S. 83, 87 (1963) and *Giglio v. U.S.*, 405 U.S. 150, 154 (1972).

The government argues that the information is not discoverable because the confidential informant will not be a witness in this case. The government further states that it has searched the relevant files and that no *Brady* or *Giglio* materials exist with regard to this defendant.

DISCUSSION

Rule 16 of the Federal Rules of Criminal Procedure requires the government to disclose certain information to a defendant in a criminal case. In *Brady*, 373 U.S. at 87, the Supreme Court held that "the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or punishment." The prosecution must also disclose evidence that goes to the credibility of crucial prosecution witnesses. See *Giglio v. United States*, 405 U.S. 150, 154 (1972); *United States v. Starusko*, 729 F.2d 256, 260 (3d Cir.1984). However, the prosecution's failure to disclose such evidence amounts to a violation of due process only if there is a reasonable probability that the jury would have returned a different verdict if the information had been disclosed, or, stated differently, if "the Government's evidentiary suppression undermines confidence in the outcome of the trial." *Kyles v. Whitley*, 514 U.S. 419, 434 (1995). Evidence is material within the meaning of Rule 16 if there is a good probability that the requested information would assist the defense in finding admissible evidence, aiding witness preparation, corroborating testimony, impeaching or rebutting the prosecution's evidence, or supporting some affirmative defense. *United States v. Pellulo*, 105 F.3d 117, 123 (3d Cir. 1997). The government has a duty to search accessible files to find

requested exculpatory material. *Hollman v. Wilson*, 158 F.3d 177, 181 (3d Cir. 1998), citing *United States v. Brooks*, 966 F.2d 1500, 1502-03 (D.C.Cir.1992).

In this case, the defendant seeks background information on the confidential informant who the government does not intend to call at trial. The government argues that because the informant will not testify, it has no duty to disclose impeachment information. In *Roviaro v. United States*, 353 U.S. 53 (1957), the Supreme Court stated that disclosure depends on the particular circumstances of each case, taking into consideration the crime charged, the possible defenses, the possible significance of the informer's testimony, and other relevant factors. *Id.* at 62. The defendant seeking such information must establish that the background and identity of such informant is relevant and helpful to his defense. *United States v. Murgas*, 967 F.Supp. 675, 712 (N.D.N.Y. 1997); *U.S. v. Davis*, 1991 WL 105402 *5 (D.Kan. June 6, 1991).

As reason for disclosure, the defendant states that such evidence is impeachment evidence and, therefore, exculpatory. He does not identify the role of the informant, nor does he say in what specific way the information sought is crucial to his case. Additionally, defendant has offered no specifics as to the alleged materiality of the informant's statements or the exculpatory information held by this individual. Simply repeating

the relevant test, without offering more, is insufficient to meet defendant's burden. *United States v. Beckett*, 889 F.Supp. 152, 155 (D.Del. 1995). The defendant has failed to articulate a particularized need for the information. Moreover, the Court will hold the government to its representations that no exculpatory information exists in the informant's file. Now therefore it is hereby

ORDERED that the defendant's motion to compel herein is DENIED.

DATED: March 24, 2003 E N T E R:

JEFFREY L. RESNICK
U.S. MAGISTRATE JUDGE

A T T E S T:
Wilfredo F. Morales, Clerk of Court
by: _____
Deputy Clerk

cc: Eric Chancellor, Esq.
Alphonso Andrews, AUSA